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Eaton
P.D. #2

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-190115

DATE: March 14, 1978

MATTER OF: Leo Kanner Associates

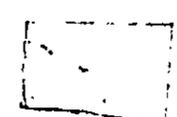
DIGEST:

1. Evaluation factors and multiple awards provision of solicitation must be read together and as not conflicting if reasonable interpretation results. Therefore, formula should be applied to determine evaluated prices before Government considers possible advantages of multiple awards.
2. Argument that evaluation by formula other than that specified in RFP would have resulted in lowest price to Government, filed after closing date, is untimely under GAO bid protest procedures.
3. GAO will not review affirmative determinations of responsibility, absent allegation of fraud or failure to meet definitive responsibility criteria.

Leo Kanner Associates (Kanner) has protested award of a contract under request for proposals (RFP) No. DAAG39-77-R-9102, issued by the Army's Harry Diamond Laboratories, Adelphi, Maryland. The Army sought translation of between 2 million and 12 million words contained in foreign language technical documents, to be performed under a 1 year contract in support of the Foreign Science Technology Center, Charlottesville, Virginia.

The RFP was issued on March 7, 1977, with a closing date of April 5, 1977. After negotiations with 10 offerors determined to be in the competitive range, including Kanner, the Army awarded a contract to Scitran on September 7, 1977.

Kanner objects to the award on three separate grounds: (1) that the solicitation required multiple awards on the basis of unit prices for categories of translation listed as subline items, because contracts with Kanner for all routine work and with Scitran for all rush work would have resulted in the lowest aggregate price to the Government; (2) that the evaluation was improper, because it was based



on proposed unit prices for only six out of eight subline items included in the solicitation; and (3) that the successful offeror is not responsible.

The solicitation in question included six items, numbered 0001 through 0006. Item 0001 called for translation of 2 million words and each succeeding item represented an increase of 2 million words, so that Item 0006 was for translation of 12 million words. Neither unit nor extended prices was requested for these items. Under each item, offerors were to submit unit prices, but not extended prices, for eight different categories of translation (subline items 0001AA through 0006AH), identified by language, security classification, and delivery time. A unit was defined as a single English word. The solicitation stated:

"D.1 EVALUATION FACTORS

"a. The following is an estimate of percentages for languages to be translated under any resultant contract.

<u>Language</u>	<u>Unclassified</u>		<u>Classified</u>	
	<u>Rush</u>	<u>Routine</u>	<u>Rush</u>	<u>Routine</u>
Prime (Russian, German, French)	13%	62%	2%	18%
All other languages		4.5%		.5%

"The estimated percentages listed above will be used for evaluating prices proposed under this RFP. An average evaluated unit price will be established by applying proposed rates to the estimated percentages above. (Emphasis added.)

"D.2 MULTIPLE AWARDS

"a. Because of the large volume of translation work, the Government may make award to more than one offeror.

"b. In addition to other factors, offers will be evaluated on the basis of advantages or disadvantages to the Government that might result

from making more than one award (multiple awards). For the purpose of making this evaluation, it will be assumed that the sum of \$100 would be the administrative cost to the Government for issuing and administering each contract awarded under this invitation, and individual awards will be for the items and combinations of items which result in the lowest aggregate price to the Government, including such administrative cost."

Kanner quoted the same unit price for all subline items for routine delivery and the same unit price for all subline items for rush delivery, regardless of language or classification:

Item No.	Supplies/Services	Quantity	Unit	Unit Price	Amount
0001	Translation Services in accordance with Section F.	2,000,000	ea	XXXX	XXXX
0001AA	Prime Languages, classified, routine delivery		ea	.0165	
0001AB	Prime Languages, classified, rush delivery		ea	.0200	XXXX
0001AC	Prime Languages, unclassified, routine delivery		ea	.0165	XXXX
0001AD	Prime Languages, unclassified, rush delivery		ea	.0200	XXXX
0001AE	Other Languages, classified, routine delivery		ea	.0165	XXXX
0001AF	Other Languages, classified, rush delivery		ea	.0200	XXXX
0001AG	Other Languages, unclassified, routine delivery		ea	.0165	XXXX
0001AH	Other Languages, unclassified, rush delivery		ea	.0200	XXXX

Scitran, on the other hand, offered lower unit prices for prime languages than for other languages:

Item No.	Supplies/Services	Quantity	Unit	Unit Price	Amount
0001	Translation Services in accordance with Section F.	2,000,000	ea	XXXX	XXXX
0001AA	Prime Languages, classified, routine delivery		ea	\$.0168	XXXX
0001AB	Prime Languages, classified, rush delivery		ea	.0170	XXXX
0001AC	Prime Languages, unclassified, routine delivery		ea	.0168	XXXX
0001AD	Prime Languages, unclassified, rush delivery		ea	.0170	XXXX
0001AE	Other Languages, classified, routine delivery		ea	.0135	XXXX
0001AF	Other Languages, classified, rush delivery		ea	.0187	XXXX
0001AG	Other Languages, unclassified, routine delivery		ea	.0185	XXXX
0001AH	Other Languages, unclassified, rush delivery		ea	.0187	XXXX

Neither firm offered volume discounts, so that the same unit prices were proposed for Items 0001 through 0006.

The Army multiplied the unit prices proposed for sub-line items by the applicable estimated percentage for each of the six categories of translation which the solicitation had indicated would be used for evaluation purposes, then added these "amounts" to obtain an average evaluated unit price for each item. Using this formula, the Army found Scitran's average evaluated unit price for each 2 million word increment was \$.016915, while Kanner's was \$.017025. Calculations were as follows:

Leo Kanner

<u>Percentage Estimate</u>	X	<u>Proposed Rate</u>	=	<u>Amount</u>
.18		\$.0165		\$.00297
.02		.0200		.0004
.62		.0165		.01023
.13		.0200		.0026
.005		.0165		.0000825
.045		.0165		<u>.0007425</u>
Average Evaluated Unit Price				\$.017025

Scitran

<u>Percentage Estimate</u>	X	<u>Proposed Rate</u>	=	<u>Amount</u>
.18		\$.0168		\$.003024
.02		.0170		.00034
.62		.0168		.010416
.13		.0170		.00221
.005		.0185		.0000925
.045		.0185		<u>.0008325</u>
Average Evaluated Unit Price				\$.016915

Neither firm changed its unit prices during negotiations. The Army determined that there was no price advantage to the Government in multiple awards and awarded Scitran a fixed price, indefinite quantity contract with a ceiling price of \$202,800 (\$.0169 x 12,000,000).

Kanner contends that the solicitation required multiple awards of subline items. Counsel for the protester cites the Uniform Contract Line Item Numbering System of Armed Services Procurement Regulation (ASPR) 20-301 to 304 (1976 ed.), which refers to "line items" and "subline items," in support of its argument that the term "items," as used in the multiple awards provision of the solicitation, refers not only to Items 0001 through 0006, but also to subline Items 0001AA through 0006AH. Because Kanner's unit prices for the four subline items representing categories of translation for routine delivery are lower than those of Scitran, award of all routine work to Kanner and all rush work to Scitran would have resulted in a lower total cost to the Government than the aggregate award to Scitran, Kanner concludes.

as you [Kanner] indicate would render the provisions of paragraph D.1 nugatory; and the Government may not evaluate offers and award a contract on bases other than those described in the solicitation."

In resolving these arguments, the primary issue for our consideration is on what basis the determination that multiple awards will or will not be advantageous to the Government must be made. All parties agree that such awards are required if they result in the lowest total cost to the Government. If the determination is made on the basis of proposed unit prices of subline items, award of all routine work to Kanner concededly would result in the lowest price to the Government.

Properly construed, however, we believe this solicitation requires the Army to determine the possible advantages of multiple awards on the basis of average evaluated unit prices of line items. If the evaluation factors of Section D.1 and the multiple awards provision of Section D.2 are read together, the average evaluated unit price for each 2 million word increment should be calculated before the determination regarding multiple awards is made. This construction gives a reasonable meaning to all parts of the RFP and at the same time applies the preferred rule that the provisions of an instrument should be construed as being in conflict with each other only if no other reasonable interpretation is possible. See Lite Industries, Inc.--Reconsideration, B-184403, July 29, 1976, 76-2 CPD 91, and cases cited therein.

The fact that no definite quantities were specified for subline items distinguishes this solicitation from those in cases where our Office has approved or required multiple or split awards of subline items. See, for example, 48 Comp. Gen. 267 (1968); Beta Systems, Inc., B-184413, February 18, 1976, 76-1 CPD 109; B-165186, November 7, 1968.

In view of these findings, we think it unnecessary to discuss the Uniform Contract Line Item Numbering System, relied on by Kanner, except to note that the regulation does not deal with evaluation and award. Rather, it imposes administrative requirements on the Government and only indirectly impacts on a bidder's or offeror's expressions. Beta Systems, Inc., supra.

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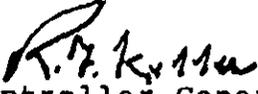
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To the extent that Kanner is objecting to the evaluation formula itself, the protest is untimely under our procedures, which require that alleged deficiencies apparent before closing be protested by that date. 4 C.F.R. 20.2(b)(1) (1977). Although the exact method by which the Army would calculate average evaluated unit prices may have been unclear, Kanner should have sought clarification or protested before closing date. See generally Design Concepts, Inc., B-186125, October 27, 1976, 76-2 CPD 365.

The same rule applies to Kanner's protest regarding use of percentages representing only six of the eight categories of translation for evaluation purposes.

As for the successful offeror's responsibility, our Office no longer reviews affirmative determinations of responsibility unless fraud or failure to meet definitive responsibility criteria are alleged. Ikard Manufacturing Company, B-190104, September 30, 1977, 77-2 CPD 251. Since this is not the case, we will not question the contracting officer's finding as to Scitran.

Accordingly, the protest is denied.


Deputy Comptroller General
of the United States